FILE COPY

93-998

NO.

A-392

SUPREME COURT, U.S.
FILED
DEC 15 1993
OFFICE OF THE CLERK

IN THE SUPREME

COURT OF THE

UNITED STATES

OCTOBER TERM, 1993

Alice Lesher

v.

Geauga Department of Human Services

---

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE OHIO STATE SUPREME COURT**

---

Mrs. Alice Lesher
(pro se)
8389 Mayfield Rd.
Suite #202
Chester, OH 44026

**Questions presented for review:**

**Question #1:**

DOES THE FAILURE OF AN APPELLATE COURT TO DECIDE AN ASSIGNMENT OF ERROR THAT A JUDGMENT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE DUE TO THE LACK OF A WRITTEN TRANSCRIPTION OF A VIDEOTAPE TRANSCRIPT CONSTITUTE A DEPRIVATION OF THE APPELLANT'S RIGHT TO AN APPEAL WITHOUT DUE PROCESS OF LAW?

**Question #2:**

IS IT A CASE OF ILLEGAL SEARCH WHEN THE DEPARTMENT OF HUMAN SERVICES INVADES ONE'S PRIVACY, ACCOMPANIED BY POLICE, TO QUESTION AND SEIZE A MINOR REGARDING AN ALLEGED ARGUMENT WITH HER PARENT?

**Question #3:**

BECAUSE A FUNDAMENTAL RIGHT, MORE PRECIOUS THAN THE PRICE OF $20 IS AT STAKE, SHOULD A MOTHER HAVE THE RIGHT TO A FULL TRIAL, INCLUDING THE CHOICE OF TRIAL BY JURY WHEN A DECISION IS BEING MADE TO SEIZE HER CHILD(REN)?

**Question #4:**

IS THE SEIZURE OR ATTEMPTED SEIZURE OF A MOTHER'S CHILD(REN) PRIOR TO A HEARING IN A COURT OF LAW A DENIAL OF THE PRIVILEGE OF A U.S. CITIZEN?

**Question #5:**

ARE LAWS WHICH PREJUDICE "NON-TRADITIONAL" FAMILIES UNCONSTITUTIONAL? (MANY OF THE ACTIVITIES APPROVED BY THE GEAUGA COUNTY DEPARTMENT OF HUMAN SERVICES DO JUST THAT, PROVIDING "FREE HELP" FOR THE PARENT WHO RUNS TO THE WELFARE DEPARTMENT FIRST AND GETS HIS STORY HEARD)

NOTIFICATION LIST

Mrs. Alice Lesher
8389 Mayfield Road
Suite 202
Chesterland, OH 44026

Ms. Mary O'Brien
Assistant County Prosecutor
231 Main St., Courthouse Annex
Chardon, OH 44024

Mr. Robert Berger
222 West Main Street
PO Box 350
Ravenna, OH 44266

Ms. Emy E. Picard
PO Box 1131
1148877 Springdale Avenue
Middlefield, OH 44062

Marcia J. Mengel
Supreme Court of Ohio
30 East Broad Street
Columbus, OH 43266-0419

**Table of Contents**

Index to Appendices.....2

Statement of the grounds on which the jurisdiction of this Court is invoked.....3

Constitutional Provisions.....5

Statement of the Case.....8

Reasons for Consideration of Writ..15

Conclusion.....21

**Table of Authorities**

Morrison v. Lipscomb, 877 F.2d 463.468 (CA6,1989); citing Logan v. Zimmerman Brush Co, 455 U.S. 422,429-30(1982).....16

Bankers, Life, and Casualty Co. v. Crenshaw,486 U.S. 71, 85 (1988).17,18

Little v. Streater, 452 U.S. 1,16 (1981), (quoting Buddie v. Connecticut, Supra,379.).....17

## INDEX TO APPENDICES

Appendix A is the finding of the Ohio State Supreme Court.

Appendix B is the finding of the Appellate Court.

Appendix C is the judgment entry ordering that I must allow my younger children to be questioned.

Appendix D is the first argument against my younger children being questioned.

Appendix E is the second argument against my younger children being questioned.

This judgment was entered on July 21, 1993 in the Ohio State Supreme Court, declaring the decision of the lower court as non-reversible which affirmed judgments of the Court of Appeals, Eleventh Judicial District of Ohio for Geauga County, finding Katherine Doyle to be an abused child and granting sole custody of such child to her natural father. Because this case contains significant constitutional issues, it is being appealed to the Supreme Court of the United States.

An extension of time to file the Petition for Writ of Certiorari was filed in the Supreme Court of the United States and granted on November 2, 1993. The time was extended until

December 18, 1993.

Although I am not an attorney; as a U.S. citizen, I feel very strongly that some of my basic rights have been violated in this case. I hear similar stories from others whose rights have been violated. For this reason, I feel obliged to beg for this Court's intervention in examining this case.

The Constitutional Issues are basic and follow below:

**Amendment IV:**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Amendment V:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval

forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

**Amendment VII:**

In suits at common law, where the value of controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the

United States, than according to the rules of the common law.

**Amendment XIV, section 1:**

All persons born or naturalized in the United States, and subject tot he jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

On September 25, 1990, the Geauga County Department of Human Services filed a complaint alleging my daughter Katherine to be an "abused child". The Complaint alleged that my child had been sexually abused on at least five (5) occasions by her stepfather by the touching of her breast. No allegation was made that such alleged touchings were for the purpose of the sexual arousal or gratification of either party. From that date, the child was seized from her mother and placed permanently with the father and no arrangements were made to allow the mother to see her child until the Summer of 1991.

On September 20, 1990, the child's natural father had filed a Motion to Modify a previous Joint Custody Agreement in order to obtain sole custody based upon the abuse allegations. The original Joint Custody Agreement had been filed in March, 1985, as an honest attempt by the mother to stop the court battles being waged by the natural father which had begun in 1979 as a result of the mother being granted a divorce due to the father's infidelity.

The adjudicatory hearing was not held until April 15, 1991, two-hundred and two (202) days following the filing of the original abuse Complaint. The dispositional hearing was held the next day.

On April 23, 1991, the Juvenile Court issued an order formally finding the child to be an abused child, and granted sole custody of such child to the natural father. At that time, the Juvenile Court ordered that the three minor children from the mother's second marriage (ages 4, 6, and 8) be interviewed by the Geauga Department of Human Services. Although there is no local, state, or federal law stating that this interview must take place, it is "procedure" within the welfare department. Although the mother adamantly countered this with motions and other pleas, the judge declared, "Well, if there isn't a law that says they are to be interviewed, there

OUGHT to be a law." I was compelled to allow the three children to be interviewed. They were not seized; however, it was clear that the Welfare Department tried everything in their power to do so.

The Appellant, the natural mother, filed a timely appeal from the order of April 23, 1991, which was affirmed by the Court of Appeals on December 22, 1991. At that time, a timely appeal was filed in the Ohio State Supreme Court. This appeal was affirmed on July 21, 1993. Although the necessity for a complete transcript was raised at the appellate level as a constitutional issue, the Ohio State Supreme Court claims that the lack of a transcript

did not allow them to review the case correctly. This issue is raised as Question #1.

While the case was under appeal, in February, 1992, the Geauga County Welfare Department, accompanied by the local police, entered my home in the evening, after beating on the front and back doors to gain admission. Possessing an order from the Juvenile Court, they demanded to interview Francina, my first daughter from my previous marriage. Because of a verbal argument she had allegedly had that morning with my husband, involving what she ate for breakfast; the Welfare Department was questioning her. At the time Francina suffered from anorexia nervosa (her

disease having been caused by the 1983 seizure of her by the same Welfare Department) and mealtimes were often cause for argument in the family. Upon Francina's insistence that there was no reason to "rescue" her and upon my insistence that they were NOT permitted to interview the younger children, despite their "procedure", they departed.

My family lives in fear that the Geauga County Welfare Department will continue to fabricate frivolous reasons to interview and subsequently seize my children. All of my children have witnessed programs in their public schools where the Geauga County Welfare Department gathers the student body together and urges them

to turn in their parents for any kind of abuse. I must constantly "undo" the havoc produced by these presentations.

Although my only experience is with the Geauga County Welfare Department, I fear that parents across the country are suffering from the actions of these dangerous governmental agencies. Parents in divorce situations are in much graver danger, as there is often one parent only too happy (nay, urged by his or her attorney) to make the other look bad.

**Reasons for this writ:**

**Argument in Answer to Question #1:**

DOES THE FAILURE OF AN APPELLATE COURT TO DECIDE AN ASSIGNMENT OF ERROR THAT A JUDGMENT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE DUE TO THE LACK OF A WRITTEN TRANSCRIPTION OF A VIDEOTAPE TRANSCRIPT CONSTITUTE A DEPRIVATION OF THE APPELLANT'S RIGHT TO AN APPEAL WITHOUT DUE PROCESS OF LAW?

The State of Ohio has established an appellate scheme which provides litigants with a property interest in the right to appeal a judgment or order that cannot be deprived without due process.

Federal constitutional due process prevents a state from denying litigants the use of established adjudicatory procedures when such action constitutes the denial of an opportunity to be heard. See Morrison

v. Lipscomb, 877 F 2d 463, 468 (CA6, 1989); citing Logan v. Zimmerman Brush Co, 455 U.S. 422, 429-430 (1982).

The purpose of Appellate Rule 9 (A) is to have the Appellant point to specific errors so that the appellate court will not have to search an entire video tape for such error.

However, such rationale is not applicable when the Assignment of Error involved is that the judgment is against the manifest weight of the evidence, since the determination thereof requires a perusal of the entire evidentiary proceedings.

As such, requiring a written transcript in such circumstances would not be reasonably related to

the State's objectives in enacting Appellate Rule 9(A). Cf. Bankers, Life, and Casualty Co. v. Crenshaw, 486 U.S. 71, 85 (1988).

Additionally, a state statute or rule "may be held unconstitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question." See Little v. Streater, 452 U.S. 1, 16 (1981), quoting Buddie v. Connecticut, Supra, 379.

Finally, the costs of having the entire videotape transcript transcribed would be so dear as to financially foreclose the right to

appeal. Cf. Bankers, Life and Casualty Co. v. Crenshaw, supra, 84n6.

**Arguments in Answer to Questions #2, 3, 4, and 5:**

2. IS IT A CASE OF ILLEGAL SEARCH WHEN THE DEPARTMENT OF HUMAN SERVICES INVADES ONE'S PRIVACY, ACCOMPANIED BY POLICE, TO QUESTION AND SEIZE A MINOR REGARDING AN ALLEGED ARGUMENT WITH HER PARENT?

3. BECAUSE A FUNDAMENTAL RIGHT, MUCH MORE PRECIOUS THAN THE PRICE OF $20 IS AT STAKE, SHOULD A MOTHER HAVE THE RIGHT TO A FULL TRIAL, INCLUDING THE CHOICE OF TRIAL BY JURY WHEN A DECISION IS BEING MADE TO SEIZE HER CHILD(REN)?

4. IS THE SEIZURE OR ATTEMPTED SEIZURE OF A MOTHER'S CHILD(REN) PRIOR TO A HEARING IN A COURT OF LAW A DENIAL OF THE PRIVILEGE OF A U.S. CITIZEN?

5. ARE LAWS WHICH PREJUDICE "NON-TRADITIONAL" FAMILIES UNCONSTITUTIONAL? (MANY OF THE ACTIVITIES APPROVED BY THE GEAUGA COUNTY DEPARTMENT OF HUMAN SERVICES REWARD PARENTS AND CHILDREN FROM DIVORCED SITUATIONS, PROVIDING "FREE HELP" FOR THE PARENT WHO RUNS TO THE WELFARE DEPARTMENT FIRST AND GETS HIS STORY HEARD)

In 1973, a federal act, the

Child Abuse Prevention and Treatment Act, was passed. This law established the basis for the child-protective system as it exists today. Many of the complaints that I have made against the Geauga County Welfare Department have been answered by, "It's the law." Because this is a federal act, the instances of injustice that I and my children have suffered can only be answered at this level. This act precludes some of my most basic rights as a parent, especially because two of my five children were from my first marriage and so seemingly subject to "other laws" as dependent children. Unbelievably, the Welfare Department is also set up to drag in my three

children from my stable marriage and see to it that they suffer as my first two have.

Only in Juvenile Court am I presumed guilty until proven innocent. My children are seized and I am not allowed to speak to them concerning the alleged abuse. However, their father, with whom they have been placed, may question them at will; as can his attorney, the welfare department, the prosecuting attorney for the welfare department, and the attorney ad litem. In addition, I must testify in court with these three adversarial questioning me one at a time as I cower on the witness stand.

Only in the eyes of the Welfare

Department are parents not allowed to make mistakes, without suffering some of the most horrible consequences both for themselves and their children. **The permission to act naturally as a parent without being in constant fear of a social agency reviewing all mistakes is an essential basic liberty being denied every mother and father in this nation who happens to come in contact with the welfare department. I argue that it is not coincidental that the parents who live with most fear are those who are divorced.**

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of

the Ohio State Supreme Court in this matter.

DATED: December 1, 1993

Respectfully submitted,

Alice Lesher

Alice Lesher, pro se

THE SUPREME COURT OF OHIO
1993 TERM
To wit: July 21, 1993

In re Katherine Doyle,:
Alleged Abused Child:Case No. 93-318

ENTRY

Upon Consideration of the motion for leave to appeal from the Court of Appeals for Geauga County, and the claimed appeal as of right from said court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, $40.00, paid by Alice Lesher. (Court of Appeals No. 91G1643)

THOMAS J. MOYER
Chief Justice

STATE OF OHIO ) IN THE COURT OF
APPEALS

COUNTY OF GEAUGA) ELEVENTH DISTRICT

IN THE MATTER OF:
KATHERINE DOYLE, JUDGMENT ENTRY
CASE NO. 91-G-1643
Alleged Abused Child
JUDGMENT: Affirmed

For the reasons stated in the Opinion of this Court, appellant's assignments of error are without merit, and it is the judgment and order of this Court that the judgment of the trial court is affirmed.

---

JUDGE JOSEPH E.MAHONEY

FOR THE COURT

On September 25, 1990, the Geauga County Department of Human Services filed a complaint alleging that Katherine Doyle was an abused child. It was alleged that the child was a victim of "sexual activity," as defined under R.C. Chapter 2907, because her stepfather, Charles Lesher, had contact with her breasts on approximately five occasions. Katherine was eleven years old at the time of the alleged contact.

The natural parents had previously entered into a joint custody agreement regarding Katherine. Based on the abuse allegations, the natural father, Robert Doyle, on September 20, 1990,

moved to modify the joints custody order and sought sole custody of Katherine. This post-decree motion was assigned Case No. 83A344.

On September 26, 1990, Alice Lesher, Katherine's mother, requested that a complete social history and mental examination be performed prior to the adjudication of the complaint.

On October 10, 1990, the trial court ordered the child and the parties to submit to psychological evaluations and later, on October 22, 1990, the trial court ordered mental examinations of the parties after being advised that both the mother and father of the child concurred.

Thereafter, Alice Lesher, appellant herein, twice moved for a

continuance of the adjudicatory hearing which the trial court granted.

On December 21, 1990, Robert Doyle moved to consolidate the hearing on his motion for a change of custody and the adjudicatory hearing on the abuse allegation. The trial court consolidated the two cases on January 4, 1991.

The adjudicatory hearing was held on April 15, 1991, after which the trial court found the child to be an abused child. Immediately thereafter, the trial court heard the change of custody motion. By agreement of the parties, the trial court held the dispositional hearing on the following day, April 16, 1991.

At the conclusion of the hearing, the trial court awarded sole custody of Katherine to her father, Robert Doyle, and ordered that restricted and supervised visitation be allowed between Alice Lesher and Katherine as set forth in the amended case plan. The trial court's judgment was journalized on April 23, 1991.

Appellant, Alice Lesher, has filed a timely appeal and now presents the following assignments of error:

"1. The trial court erred in consolidating the abuse proceeding with the change of custody proceeding.

"2. The trial court erred by ordering psychological examinations

prior to the determination of the adjudicatory phase.

"3. The trial court erred in holding the dispositional hearing one (1) day after the adjudicatory hearing.

"4. The trial court erred in finding the child an 'abused child.'"

Although neither party raises the issue, we note that this case contains videotape recordings of the hearings conducted by the trial court. These tapes have not been transcribed or otherwise certified as required under App.R. 9(A) and 9(B). App. R. 9(A) provides in relevant part:

"***[w]hen the transcript of proceedings is in the videotape medium, counsel shall type or print

those portions of such transcript necessary for the court to determine the questions presented, certify their accuracy, and append such copy of the portions of the transcripts to their briefs."

App.R. 9(B) states in pertinent part:

"The reporter shall certify the transcript as correct whether in the written or videotape form, and state whether it is a complete or partial transcript, and, if partial, indicate the parts included and the parts excluded."

This court will not, nor should appellant expect it to, search through the videotapes in order to find passages that support the assignments of error raised. See Lorain v. Robertson (1984), 21 Ohio App.3d 93; Bantel v. Herbert (1987), 31 Ohio App.3d 167; STate v. Ebright (1988), 47 Ohio App.3d 123. The determination of appellant's second

and fourth assignments of error would require a review of the videotape transcript since the arguments raised in those errors refer to what occurred during the adjudicatory stage of the proceedings. However, without a proper and complete transcript of proceedings, this court must presume the regularity of the trial court's proceedings. Knapp v. Edwards Laboratories (1980), 61 Ohio St.2d 197. Accord State V. Boughner (July 19, 1991), Geauga App. No. 90-G-1584, unreported. Accordingly, appellant's second and fourth assignments of error are without merit.

In the first assignment of error, appellant argues that the

trial court erred in consolidating the abuse proceeding with the change of custody proceeding. Appellant presents three arguments in support of the assignment. First, she contends that the juvenile court had no jurisdiction to consolidate the cases since Civ.R. 42, which permits consolidation, is not applicable to juvenile proceedings and there is no corresponding juvenile rule which permits consolidation of cases. This argument is not persuasive.

Just as there is no juvenile rule which specifically allows consolidation, there is no juvenile rule which prohibits such consolidation. The cases cited by the appellant do not address this issue

and are not applicable. It is clear that the juvenile court had jurisdiction over the custody matter and the abuse proceeding and under R.C. 2151.353(B) could have granted custody upon Robert Doyle's motion after making the disposition that Katherine was an abused child. Effectively, this is what the court did and we find nothing improper in the court's proceeding and fail to see how the appellant was prejudiced.

Appellant's second contention is that the consolidation of the proceedings "has a tendency to confuse the issues" and that the child abuse proceeding is a special statutory proceeding which has precedence over a change of custody

proceeding which is a general statutory provision. Again, there is no evidence that the trial court confused the issues or that appellant was prejudiced in any way. Thus, this contention is without merit.

Finally, appellant claims that the consolidation of the two proceedings "permits the use of inappropriate matters into the adjudicatory phase of the abuse proceedings." Appellant does not allege that inappropriate matters were <u>in fact</u> admitted in the adjudicatory proceeding. Moreover, the record, incomplete as it is, would not support the allegation had appellant argued it. Appellant also claims she was prejudiced by the

psychological examinations and the fact that the dispositional hearing was not held within ninety days after the complaint was filed, which she attributes to the consolidation. Appellant's complaints are devoid of any merit. The record shows that it was the appellant who requested the psychological examinations and who requested two continuances of the adjudicatory hearing of which she now complains. Therefore, appellant has waived any error due to the delay caused by her request for the psychological examinations.

The first assignment of error is not well taken.

In the third assignment of error, appellant contends that the

trial court erred in holding the dispositional hearing the day after the adjudicatory hearing. Appellant claims that her constitutional right to due process has been violated because she allegedly was not provided with a notice of the case plan and, thus, she could not meaningfully present her objections to such plan.

Appellant's argument is not well taken.

Statutorily, the dispositional hearing may be held one day after the adjudicatory hearing. See R.C.2151.35(B)(1). Furthermore, the trial court's judgment indicates that:

"All parties agreed that the

dispositional hearing will be set for 9:30 a.m., Tuesday, April 16, 1992. It was also agreed by all parties that the case plan addressing re-unification of the family members would be filed by the Department of Human Services before the hearing on Tuesday, April 16, 1991. Additionally, it as agreed by all parties that in the interests of judicial economy, testimony and evidence, which his applicable to the disposition of this case and which is presented in the hearing on the motion for a change of custody which will be heard today, will be used by this court in its determination of the appropriate disposition of this matter."

Without a proper transcript, we must presume the validity of the trial court's finding that all parties agreed to hold the dispositional hearing the day after the adjudicatory hearing. As such, any objection appellant claims has been waived. See Knapp, supra.

Therefore, the third assignment of error is without merit.

Based on the foregoing reasons, the judgment of the trial court is affirmed.

_____

JUDGE JOSEPH E. MAHONEY

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO
JUVENILE DIVISION

IN THE MATTER OF :CASE NO:
90JA000532
KATHERINE DOYLE :ID # 14552
Alleged Abused Child:

JUDGE: FRANK G. LAVRICH

JUDGMENT ENTRY

This cause came on for hearing this 26th day of September, 1990 to review the court's ex parte no contact order issued September 25, 1990. Present in court were Alice Lesher, mother, represented by Richard Makowski; Robert Doyle, father, represented by Robert Berger; Emy Picard, Guardian ad Litem; and Lori Carusso, Social Worker, of the Geauga County Department of Human Services, represented by Assistant Prosecuting Attorney Julia Martens Lipp.

The court heard the evidence presented and determined that the no contact order should continue until further order of the court.

The court further ORDERED that the Department of Human Services be permitted to interview child's three half-siblings, Diana, Christopher, and Danny Lesher in connection with this investigation.

The court further ORDERED that Katherine, mother, stepfather, father, and stepmother submit to psychological evaluations by Dr. Margaret Lahner.

An adjudicatory hearing will be held on November 6, 1990, at 9:30 o'clock a.m.

_____
FRANK G. LAVRICH, JUDGE

Prepared by: Julia Martens Lipp,
Assistant Prosecuting Attorney

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF) CASE NO. 90 JA 000532
KATHERINE DOYLE, ) JUDGE FRANK G. LAVRICH
Alleged Abused Child) MOTION FOR RELIEF FROM ORDER

Now comes Alice Lesher, mother of the minor as to whom this matter is filed, and requests an order of the Court, pursuant to Ohio Civil Rules a(A) and 60(B)(5), granting relief from that portion of this Court's order entered on October 10, 1990, which "ORDERED that the Department of Human Services be permitted to interview child's three half-siblings, Diana, Christopher, and Danny Lesher in connection with this investigation" for the reason that this Court possesses no

jurisdiction over these minors, or authority to enter such an order concerning minors who are not part of the subject case.

The instant case involves a complaint with an allegation of abuse as to one child: Katherine Lesher, a child of Alice Lesher fka Doyle and Robert C. Doyle, II. On september 26, 1990, the Court held a hearing to review an ex parte "no contact" order which had been entered on September 25, 1990, upon Motion by the complaining witness, the Geauga County Department of Human Services, to prohibit the mother from having any contact with the child during the pendency of this action.

At that hearing, at its

conclusion, the representative of the Department of Human Services made a request, through her attorney, the Geauga County Prosecuting Attorney, to undertake an interview of minor children of said Alice Lesher and Charles Lesher, the mother's husband of some eight years, citing as authority that it is the internal rule of the Department of Human Services to conduct such interviews upon a complaint alleging an abused child.

Fortunately, the internal rules of a County Department of Human Services do not constitute a vesting of jurisdiction upon a Juvenile Court in the State of Ohio. The authority of this Court to issue orders is

derived from the Constitution of the State of Ohio and the written statutes of Ohio. Article IV, Section 4 of the Ohio Constitution provides that the jurisdiction of a juvenile court, being a division of a common pleas court, shall only be derived from that jurisdiction granted by statute.

The Ohio Legislature has carefully delineated those matters over which this juvenile court possesses jurisdiction in Revised Code Section 2151.23. That Section does vest the Court with jurisdiction concerning any child who is alleged to be abused, neglected or dependent. This Court's jurisdiction has been invoked as to one child in this

action, namely Katherine Doyle. The invocation of jurisdiction under this statute does not place all minor children of the mother who happens to be the mother of the specific child over whom jurisdiction is invoked, within the authority of the Court.

There is no statute of the State of Ohio which vests a juvenile court with authority as a general enforcer of internal rules or policies of a county Department of Human Services.

In as much as the instant action is a complaint alleging an abused condition of only one child, and in the complete absence of any authority upon which this Court can attempt to exercise jurisdiction over minor children who are not the subject

matter of any pending proceeding, that portion of this Court's order of October 10, 1990, which directs that the Department of Human Services may proceed with interviews of minor children of Alice and Charles Lesher must be vacated.

Furthermore, there appears to be a clerical error in the order as prepared by the Prosecuting Attorney as to submission for psychological evaluations to Dr. Margaret Lahner by the step-parents within the instant case.

If the Court will recall, the entire matter of psychological examinations was raised by two separate motions filed on behalf of Alice Lesher: one in the instant

action, for examination of the natural parents and the child; and another separate Motion in the divorce case, captioned as "Alice Doyle nka Alice Lesher -vs- Robert C. Doyle, II", Case No. 83A 344, requesting examinations of the parties, the minor daughters as to whom Mr. Doyle has filed a Motion For Change of Custody; and the step-parents. Neither the prosecuting attorney nor the Department of Human Services are parties to the latter action; and it was intentional on the part of the moving party, Alice Lesher, that separate motion be made to keep the Prosecuting Attorney from intercepting confidential matters over which it possesses no legal

interest, which it has been known to do in the past.

This distinction between the separate proceedings is of utmost importance where it has been stated in open court that the Department of Human Services has already turned over its file on the alleged abuse matter to the Chester Township Police: accessibility to the interview and report requested in the divorce case for the Prosecuting Attorney will only serve as a vehicle to further an investigation within the boundaries of criminal law.

In as much as the request which was before the Court was that of Alice Lesher to cause an examination pursuant to Juvenile Rule 32 (A)(3)

in the instant action, the order should only have stated that the confidential psychological evaluation in this action is to be performed with the minor child and her mother and father.

A separate order for examination under the divorce action is being submitted, which does not involve the Department of Human Services or the office of the Prosecuting Attorney.

Respectfully submitted,

_____

RICHARD J. MAKOWSI
Attorney for Alice Lesher

SERVICE, etc.

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF: ) CASE NO.
90JA000532
)
KATHERINE DOYLE) MOTION FOR
RECONSIDERATION
Alleged abused child

Now comes Alice Lesher, parent of Katherine Doyle, and requests that this Court reconsider the ruling made at hearing on April 16, 1991, that the children of Alice Lesher and Charles Lesher, be subject to interview by the Geauga County Department of Human Services, for the following reasons:

The Prosecuting Attorney gave as reason for the Welfare Department's request to interview the children who are issue of the marriage of Alice

Lesher and Charles Lesher, but who had no role in the proceedings before the Court concerning the welfare of Katherine Doyle, the definition of a "dependent" child cited in Section 2151.04 of the Ohio Revised Code. However, the Prosecuting Attorney did not cite to this Court the entire definition of "dependent" child contained in that Section, but selected only a portion which supported her position. To be sure, that Section defines as "dependent":

"[A]ny child:
..."(D) To whom <u>both</u> of the following apply: (1) He is residing in a household in which a parent, guardian, custodian or other member of house hold has abused or neglected a sibling of the child;"
"(2) Because of the circumstances surrounding the abuse or neglect of the sibling and the other conditions in the household of the child, the

child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household." (Emphasis added)

There has been no evidence adduced or finding made by the Court as to the second requirement of this statutory definition of a dependent child to make the Lesher children eligible for a court order that they be interviewed by the Department of Human Services in connection with a case involving their step-sister.

Furthermore, there can be no adjudication of any kind involving the children of Charles Lesher and Alice Lesher when Charles Lesher was not made a party to the proceedings involving a complaint concerning Katherine Doyle, was not served any

pleading addressed to the status of those children, and was not given any opportunity to be heard in the matter.

Revised Code 2151.28(C) requires the services of a Summons upon the parent of a child about whom the court is seeking to enter an order under Chapter 2151 of the REvised Code, advising the parent of the right to a hearing in the matter. Unless a Summons is served in accordance with this Section, this Court is without jurisdiction to pursue any findings or orders as to a child.

Charles Lesher was not served with Summons or given any opportunity to be heard in connection with the

Court's consideration of any order relating to his children. Alice Lesher did not purport to appear on behalf of Charles Lesher; and the undersigned has not appeared on his behalf in these proceedings.

Accordingly, the Court was without jurisdiction to enter such order in September, 1990, upon the request of the Department of Human services; and without jurisdiction to reinforce such order by its ruling on April 16, 1991.

Alice Lesher, therefore, requests that the Court vacate that portion of its ruling of April 16, 1991.

Respectfully submitted,

_____

RICHARD J. MAKOWSKI
Attorney for Alice Lesher